

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MARIANNE MURPHY and WILLIAM MURPHY,
Plaintiffs,

Docket No. 07-CIV-9415
Buchwald, J.

-against-

CONTINENTAL AIRLINES, INC.,
Defendant.

ANSWER OF
CONTINENTAL AIRLINES, INC

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Defendant CONTINENTAL AIRLINES, INC. (hereinafter "Continental"), by its attorneys, McKeegan & Shearer, P.C., as and for its Answer to the Complaint of plaintiff states:

1. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "FIRST" of the Complaint.
2. Denies the allegations contained in paragraphs "SECOND" and "THIRD" of the Complaint except states that Continental was incorporated under the laws of the State of Delaware, that it is and was authorized to conduct business in the State of New York and that it is and was conducting business in the State of New York.
3. Admits the allegations contained in paragraph "FOURTH" of the Complaint.
4. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "FIFTH" of the Complaint.

5. Denies the allegations contained in paragraph "SIXTH" of the Complaint except refers issues of law to this Court.

6. Denies the allegations contained in paragraph "SEVENTH" of the Complaint except states that it employed personnel in connection with its business as a commercial airline.

7. Denies the allegations contained in paragraphs "EIGHTH" and "NINTH" of the Complaint except refers issues of law to this Court.

8. Denies the allegations contained in paragraphs "TENTH", "ELEVENTH", "TWELFTH", "THIRTEENTH", "FOURTEENTH" and "FIFTEENTH" of the Complaint.

9. As and for its Answer to paragraph "SEVENTEENTH" of the Complaint, Continental repeats, reiterates and realleges paragraphs "1" through "8" hereof as though set forth herein at length.

10. Denies the allegations contained in paragraph "EIGHTEENTH" of the Complaint except refers issues of law to this Court.

11. Denies the allegations contained in paragraph "NINETEENTH" of the Complaint.

AS AND FOR A FIRST SEPARATE AFFIRMATIVE DEFENSE
TO THE COMPLAINT OF PLAINTIFFS, CONTINENTAL STATES:

12. Defendant's liability is limited pursuant to the Montreal Convention and/or other applicable treaties, conventions or international agreements.

AS AND FOR A SECOND SEPARATE AFFIRMATIVE DEFENSE
TO THE COMPLAINT OF PLAINTIFFS, CONTINENTAL STATES:

13. The Complaint fails to state a claim upon which relief can be granted.

AS AND FOR A THIRD SEPARATE AFFIRMATIVE DEFENSE
TO THE COMPLAINT OF PLAINTIFFS, CONTINENTAL STATES:

14. The plaintiffs' injuries were caused in whole or in part by the culpable conduct of plaintiffs, including their contributory negligence and assumption of risk of injury. Plaintiffs' culpable conduct is a bar to their recovery or, in the alternative, shall diminish those damages sought in the proportion to which plaintiffs' culpable conduct bears to the culpable conduct which caused those damages.

AS AND FOR A FOURTH SEPARATE AFFIRMATIVE DEFENSE
TO THE COMPLAINT OF PLAINTIFFS, CONTINENTAL STATES:

15. If the plaintiffs sustained any damages or injuries as alleged in the Complaint, then such injuries or damages were suffered not by reason of any fault on the part of Continental, but rather by reason of the fault of others over whom Continental had no control.

AS AND FOR A FIFTH SEPARATE AFFIRMATIVE DEFENSE
TO THE COMPLAINT OF PLAINTIFFS, CONTINENTAL STATES:

16. This action does not fall within any exception enumerated in New York Civil Practice Law and Rules Article 16, and, if liability of Continental is found to be fifty percent or less of the total liability assigned to all persons liable, the liability of Continental shall not exceed its equitable share determined in accordance with the relative culpability of each person contributing to the total liability for non-economic loss.

AS AND FOR A SIXTH SEPARATE AFFIRMATIVE DEFENSE
TO THE COMPLAINT OF PLAINTIFFS, CONTINENTAL STATES:

17. Continental is entitled to set-off any damages as already paid by collateral source or can reasonably be expected to be paid in the future by a collateral source.

AS AND FOR A SEVENTH SEPARATE AFFIRMATIVE DEFENSE
TO THE COMPLAINT OF PLAINTIFFS, CONTINENTAL STATES:

18. Any injuries sustained by the plaintiffs were caused solely by open and obvious risks that were knowingly assumed by plaintiffs.

AS AND FOR A FIRST DEFENSE TO THE
COMPLAINT OF PLAINTIFFS, CONTINENTAL STATES:

19. Plaintiffs' recovery against Continental, if any, should be set off and reduced by an amount of money or compensation the plaintiffs received by settlement or judgment rendered in any prior legal proceeding or otherwise.

AS AND FOR A SECOND DEFENSE TO THE
COMPLAINT OF PLAINTIFFS, CONTINENTAL STATES:

20. Plaintiffs failed to mitigate their damages.

AS AND FOR A THIRD DEFENSE TO THE
COMPLAINT OF PLAINTIFFS, CONTINENTAL STATES:

21. Continental did not create and had no notice of any hazardous or dangerous condition at the premises at which plaintiffs sustained their alleged injuries.

AS AND FOR A FOURTH DEFENSE TO THE
COMPLAINT OF PLAINTIFFS, CONTINENTAL STATES:

22. Plaintiffs' claims are preempted by applicable federal law.

WHEREFORE, defendant CONTINENTAL AIRLINES, INC. demands judgment
as follows:

- (a) dismissing plaintiffs' Complaint together with the costs and disbursements
of this action;
- (b) costs, disbursements and attorneys' fees, and
- (c) such other and further relief as this Court may deem just and proper.

Dated: New York, New York
October 22, 2007

McKEEGAN & SHEARER, P.C.

By /s/
George P. McKeegan (GPM 8602)
(A Shareholder of the Firm)
Attorneys for Defendant
192 Lexington Avenue
New York, New York 10016
(212) 661-4200

TO: SHAKED & POSNER
Attorney for Plaintiffs
255 West 36TH Street
8th floor
New York, New York 10018

AFFIDAVIT OF MAILING

STATE OF NEW YORK)
 ss.:
COUNTY OF NEW YORK)

LINDA ARCARA, being duly sworn, deposes and says:

That I am not a party to this action, am over the age of 18 years and reside in Bayside, New York.

That on the 25th day of October 2007, I served a true copy of the ANSWER OF CONTINENTAL AIRLINES, INC. in the following manner:

By mailing the same in a sealed envelope, with postage prepaid thereon, in an official depository of the U.S. Postal Service within the State of New York, addressed to the last known of the addressee(s) as follows:

SHAKED & POSNER
255 West 36th Street
8th Floor
New York, New York 10018

Sworn to before me this
25th day of October 2007

_____/s/_____
Linda Arcara

_____/s/_____
Notary Public
GEORGE P. McKEEGAN
Notary Public, State of New York
No. 02MC6131547
Qualified in Westchester County
Commission Expires August 8, 2009